

FILED

September 16, 2019

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN COURT OF APPEALS
Case No. A19-0665**

Michelle L. MacDonald, MacDonald Law Firm, LLC

Appellants,

vs.

**Appellants' Responsive Motion
Objecting to Respondents'
Motion to Strike**

Michael Brodkorb, Missing in Minnesota, LLC

Respondents,

**TO: CLERK OF THE APPELLATE COURTS, 305 MINNESOTA JUDICIAL
CENTER, 25 MARTIN LUTHER KING JR. BLVD., ST. PAUL,
MINNESOTA 55155.**

Appellants, Michelle MacDonald, and MacDonald Law Firm, LLC and move the Minnesota Court of Appeals, pursuant to Minn. R. Civ. App. P. 127 (Motions) and 110.01 of the Minnesota Rules of Civil Appellate Procedure (Composition of Record of Appeal), for an order:

1. Denying Respondents' Motion to Strike.
2. For such other and further relief as the Court deems just.

Said motion will be made to the Court based upon the attached Appellants' Responsive Memorandum with attachments Exhibits 1-4, and all pleadings, records and files herein, and will be addressed to the sound discretion of the Court.

Respectfully submitted,

/s/ Karlowba R. Adams Powell

Dated: September 16, 2019

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ATTORNEY FOR APPELLANTS

**STATE OF MINNESOTA
IN COURT OF APPEALS
Case No. A19-0665**

Michelle L. MacDonald, MacDonald Law Firm, LLC

Appellants,

vs.

**Appellants' Responsive Memorandum
Objecting to Motion to Strike**

Michael Brodkorb, Missing in Minnesota, LLC

Respondents,

Appellants, Michelle L. MacDonald and MacDonald Law Firm, LLC, oppose *Respondent's Motion to Strike, dated September 11, 2019*. Appellants have appealed the Order Denying Default Judgment and Granting Summary Judgment, March 1, 2019. See Appellants' Brief *A. 1-25*

Respondents did not answer the Plaintiffs' Complaint for defamation, defamation per se and defamation by implication as to their website and dissemination on social media, including violations of ethics of professional journalism. There was no discovery or trial. The record on appeal includes Appellants' complaint, and motion pleadings and the order.

Respondents seek to have this court strike A. 58 and A. 60 of the Addendum to Appellants' Brief, attached. (Ex. 2 and 4 attached). A. 58 is a tweet, and A. 60 is a letter to Dakota County, dated June 22, 2018.

Respondents falsely assert that A. 58 and A. 60 "are wholly outside of the record and cannot be considered by the Court on this appeal". Respondents further

assert that “neither of these documents are identified as having been filed in court and neither is in fact part of the record before the court on appeal.” Respondents’ assertions are not true. Both of these items are part of the record.

Minn. R. Civ. App. P 110.01 states, “[t]he papers filed in the trial court, the exhibits, and the transcripts of proceedings, if any, shall constitute the record on appeal in all cases.” Minn. R. Civ. App. P. 111.01 directs the trial court administrator to transmit to the clerk of the appellate courts together with an itemized list... all documents and exhibits contained in the record.

The Plaintiffs’ Complaint is fully set forth in the Addendum to the Brief as filed with the Court. See Appellants’ Brief A.26-54. Paragraph 58 of the Plaintiffs’ complaint references a tweet on February 16, 2016. (Exhibit 2 attached) As such, A.58 was referenced in the Plaintiffs’ complaint, and is part of the record.

As to the letter to Dakota County regarding clerical error, dated June 22, 2018, A. 60, this letter is specifically referenced in the court’s Order that is the subject of this appeal. The Judge writes as to the filing error: “ *That same day, June 22, Plaintiff’s filed a letter notifying the Dakota County District Court that the case had been e-filed and accepted in Dakota County in error.*” (Exhibit 1 attached). The Judge is referring to the June 22, 2018 letter that is referenced in the lower court’s order, that letter comprises A.60. (Exhibit 2 attached)

This letter was copied to attorney Nathan Hanson and served via the e-service filing system. The record reflects that the motion for rule 11 was withdrawn by Respondents, a motion purportedly based on filing the same action in two counties, which was a clerical error that Respondents exaggerated.

To the contrary, these Addendum items were part of the record below, and it is not appropriate to request that they be stricken or to strike these items. Contrary to Respondents' assertion, Appellants and the lower court did include these items, as A.58, which was referenced in the Plaintiffs' Complaint, and A.60 was referenced in the Judge's order.

CONCLUSION

Respondents' motion to strike must be denied. A.58 was referenced in the Plaintiffs' Complaint, and A.60 was referenced in the Judge's order. Both A.58 and A. 60 are a part of the court record. Respondents must be required to timely respond to all of the arguments in Appellants' Brief.

Respectfully submitted,

/s/ Karlowba R. Adams Powell

Dated: September 16, 2019

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